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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 259

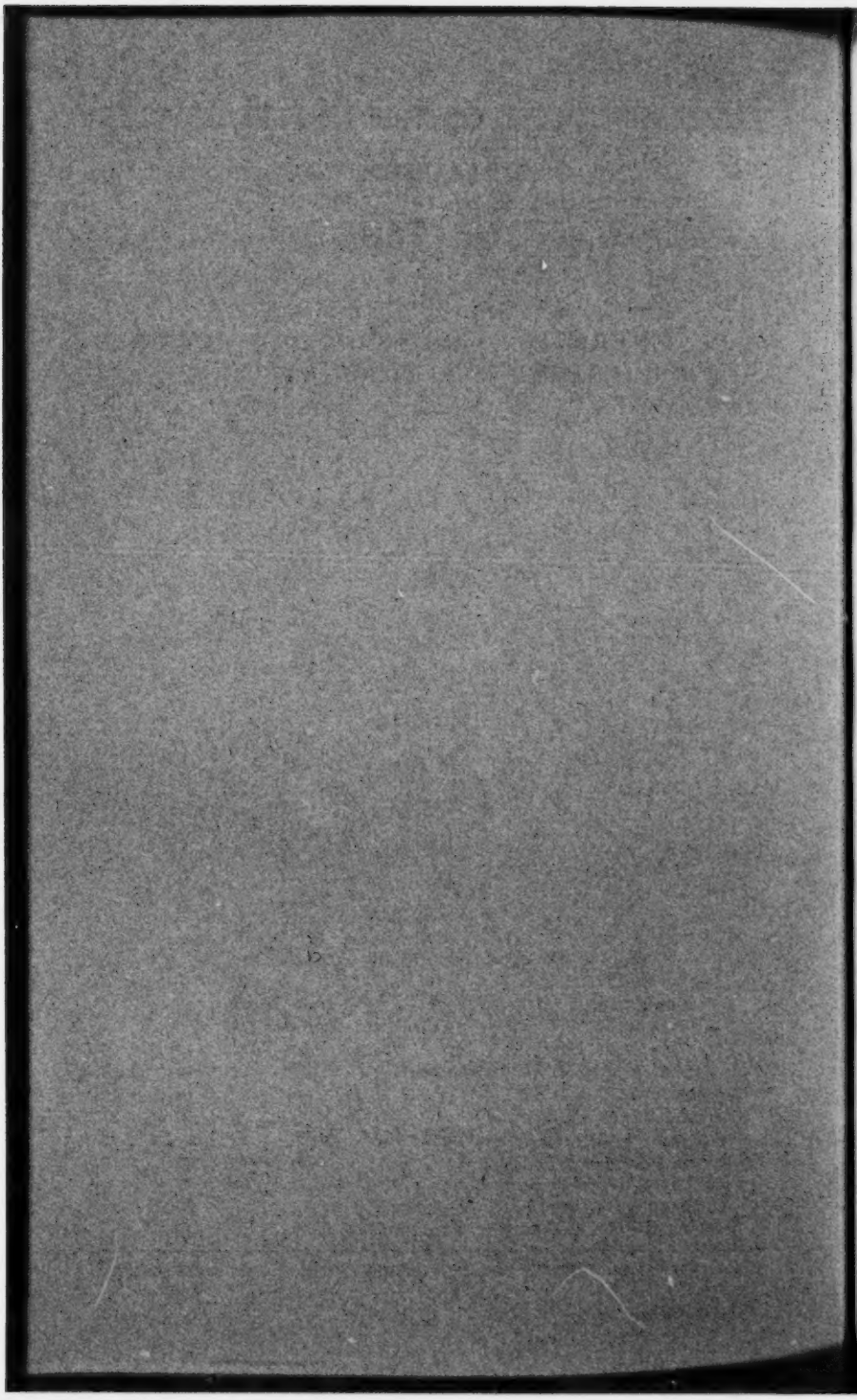
H. CLYDE REEVES, COMMISSIONER OF REVENUE OF THE COMMONWEALTH OF KENTUCKY, APPELLANT,

vs.

BEN WILLIAMSON, JR., TRUSTEE OF THE KENTUCKY FUEL GAS CORPORATION

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED JULY 31, 1942.



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IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY

INTERVENING PETITION OF H. CLYDE REEVES—Filed April 11, 1941

To the Hon. H. Church Ford, Judge of the District Court for the United States for the Eastern District of Kentucky:

Your petitioner, H. Clyde Reeves, states that he is the duly appointed, qualified and acting Commissioner of Revenue of the Department of Revenue of the Commonwealth of Kentucky, and as such is its executive and administrative head and that the Department of Revenue has the statutory duty of assessing the tax prescribed by Section 4077-4091, Carroll's Kentucky Statutes, 1936 Edition, and Supplement thereof, and that the Department of Revenue, and he, as the Commissioner of Revenue, has the duty of collecting all delinquent and omitted taxes owing to the Commonwealth of Kentucky.

He states that the Kentucky Fuel Gas Corporation is a Corporation organized under the laws of the State of Delaware and was and is qualified to and did and does business in the Commonwealth of Kentucky, and that prior to January 1, 1938, and until the present, the corporation operated and did business in Kentucky under the trusteeship of Ben Williamson, Jr., who was duly appointed in bankruptcy action No. 991-B in the United States District Court for the Eastern District of Kentucky pursuant to a petition filed therein by creditors and stockholders in accordance [fol. 4] with the reorganization statutes 77B of the Federal Bankruptcy Statutes, Revisions and Amendments thereto by the Chandler Act for the purpose of affecting a reorganization of said corporation.

The said H. Clyde Reeves states that the Kentucky Fuel Gas Corporation is a corporation coming within the provisions of Sections 4077 through 4091, Carroll's Kentucky Statutes, 1936 Edition and Section 4077 of Baldwin's 1938 Supplement to Carroll's Kentucky Statutes, and that while under the trusteeship of Ben Williamson, Jr., said corporation operated and transacted business and owned property during the period from January 1, 1938, to December 31, 1938, the tax year.

Section 4077 Baldwin's 1938 Supplement to Carroll's Kentucky Statutes, provides:

"Every railway company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telephone company, telegraph company, press dispatch company, bus line company, common carrier trucking company, air transport company, palace car company, dining car company, sleeping car company, chair car company, tank car company, coal car company, pipe line company, and every other like company or business performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, wherein its franchise may be exercised.

"The property of such taxpayer shall be classified as operating tangible, franchise, non-operating tangible and non-operating intangible.

"Non-operating intangibles within the taxing jurisdiction of the Commonwealth shall be taxable for State purposes only at the same rate as the intangible property of other taxpayers not performing public services, and tangi- [fol. 5] ble property whether operating or non-operating shall be subject to State and local taxes at the same rate as the tangible property of other taxpayers not performing public services.

"The Department of Revenue shall have sole power to value and assess all of the property, including the franchise, of every corporation, company, association, partnership, or person performing any public service, including those enumerated above and all others to whom this section may apply, whether or not such operating or non-operating tangible or non-operating intangible, or franchise values have heretofore been assessed by said Department, and shall apportion such assessments of franchise as provided by section 4081 of the Statutes and shall certify tangible property to the counties, cities, towns and taxing districts where said property is situated. Provided, however, that in the case of a taxpayer whose business is predominantly non-franchise and the franchise or public service business in which he is engaged is merely incidental to his principal business, the Department shall in the exer-

cise of its judgment and discretion, determine from evidence which it may have or obtain, what portion of the capital and property is devoted to the public service business subject to assessment by the Department under this Act, and shall require the remainder of the property not so engaged to be assessed by the local taxing authorities."

During our tax period $275,000.00 not used in the operation of the franchise business and hence being non-operating intangible property was invested in postal savings deposits.

This property was assessed at 50c per $100 valuation, in accordance with Section 4019 Baldwin's 1938 Supplement to Carroll's Kentucky Statutes, reading as follows:

"An annual ad valorem tax for state purposes of five (five) cent- each one hundred dollars (one hundred dollars) [fol. 6] of value of all real estate directed to be assessed for taxation, as provided by law and fifty cents upon each one hundred dollars (one hundred dollars) of value of all other property directed to be assessed for taxation, as provided by law, shall be paid by the owner, person or corporation assessed; except a tax at the rate of one-tenth of one per cent (one-tenth of one per cent) shall be paid annually upon the amount of deposits in any bank, trust company, or combined bank and trust company, organized under the laws of this State, or in any national bank of this State, as now provided by law; and also including building and loan associations incorporated under the laws of this State, and making loans to members only, which association shall be assessed except as otherwise provided by law in the manner and at the rate now set forth in Chapter fourteen of the Acts of the extraordinary session of the general assembly of nineteen seventeen (Sections four thousand nineteen a-six, four thousand nineteen a-seven, and four thousand nineteen a-eight)."

The tax on this $275,000.00 amounted to $1,370.00.

The said H. Clyde Reeves says that said assessment and tax liability became final June 1, 1939, when notice thereof was received by said corporation, and that under the provisions of Section 4091 of Carroll's Kentucky Statutes, 1936 Edition, thirty days after notice of the amount of said tax was given by the Department of Revenue whose duty it is to collect same, said corporation must be considered

as delinquent, and the penalty of ten per cent under said section attaches amounting to $137.00 and that said penalty did attach on July 1, 1939, and that thereafter under said section such tax bears interest at the rate of ten per cent per annum. Section 4091 provides:

"All the state taxes assessed against any corporation, company or association, under this article, shall be due [fol. 7] and payable thirty days after notice of the same has been given said corporation, company or association by the auditor; and all county, municipal, school and other taxes shall be due and payable thirty days after notice of the amount of said tax is given by the officer whose duty it is to collect the same; and every such corporation, company or association failing to pay its taxes, after receiving thirty days' notice, shall be deemed delinquent, and a penalty of ten per cent (10%) on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent (10%) per annum. Any such corporation, company or association failing to pay its taxes, penalty and interest, after becoming delinquent, shall be deemed guilty of a misdemeanor and, on conviction, shall be fined fifty dollars ($50.00) for each day the same remains unpaid, to be recovered by indictment or civil action, of which the Franklin circuit court shall have jurisdiction. It shall be the duty of the county clerk to furnish to the auditor of public accounts, on blanks provided by the auditor, a statement of the assessed value of the tangible property of all corporations, companies or associations paying a franchise or other tax under this act.

"Any county clerk failing to comply with the requirements of this act shall be guilty of a misdemeanor and, on conviction, shall be fined not less than ten nor more than twenty-five dollars."

On October 18, 1939, the said H. Clyde Reeves says he timely filed in this action, with the trustee in bankruptcy, a verified proof of claim asserting the liability of the debtor for taxes, penalty and interest. The trustee refused and now refuses to pay the tax, penalty or interest on this item of postal savings deposits because the trustee claims (A) postal savings deposits are exempt from taxation by the State; (B) to tax postal savings at 50c per hundred and bank deposits located in the State at 10c per hundred is

discriminating. The trustee filed in this action exception to this tax claim.

The said H. Clyde Reeves says that this is a statutory [fol. 8] liability legally computed upon assessments made by the legally constituted Kentucky Tax Commission of the Department of Revenue; that — is no miscalculation, and that it is a just liability.

The rights of the Commonwealth can not be fully adjudicated without this intervention properly asserting its claim for determination upon the merits.

It is further stated that no part of this principal, penalty or interest has been paid, nor are there any set-offs of counter claims to same; that the Commonwealth of Kentucky has not, nor has any person by order of the Commissioner of Revenue, or to the knowledge or belief of the Commissioner of Revenue for the use of the Commonwealth of Kentucky had or received any manner of security for the debt whatsoever. The claim is a just one, a statutory liability legally due, computed upon assessments made by the legally constituted Kentucky Tax Commission and there is no miscalculation.

Wherefore, your petitioner prays that an order be entered giving your petitioner leave to intervene in this proceeding for the purpose of having determined the liability of Ben Williamson, Jr., as trustee of the Kentucky Fuel Gas Corporation for the claim as set forth herein or any portion thereof. Your petitioner further prays that a judgment be rendered against Ben Williamson, Jr., as trustee of the Kentucky Fuel Gas Corporation for its claim and for costs and all other relief to which he or the Commonwealth of Kentucky may be entitled.

Hubert Meredith, *Attorney General;* H. Appleton Federa, *Asst. Attorney General,* Frankfort, Kentucky, Counsel for Intervening Petitioner.

[fol. 9] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed April 11, 1941

Comes Ben Williamson, Jr., Trustee for the Kentucky Fuel Gas Corporation, and moves the Court to dismiss the intervening petition filed herein by the Commissioner of Revenue of the Commonwealth of Kentucky and seeking to

subject United States postal savings certificates held by the Trustee during the year 1938 to taxation for State purposes, because said petition does not state facts constituting a cause of action against the Trustee nor entitling the petitioner to any relief or recovery thereunder.

Robt. T. Caldwell, Porter M. Gray, *Counsel for Trustee.*

IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed November 16, 1940

In Re: Proposed Assessment of United States Postal Savings Certificates for State Taxes

It is stipulated by the parties, by counsel, as follows:

1. During a portion of the year 1938, the Trustee of the Kentucky Fuel Gas Corporation held Postal Savings Certificates of the aggregate principal amount of $275,000.00, issued in his name as Trustee and purchased with funds of the estate of the Kentucky Fuel Gas Corporation through the Ashland, Kentucky, Post Office. These certificates were purchased, and later redeemed, through the Ashland Post Office in the manner described in the statement of the Postmaster hereinafter referred to.

2. The manner of handling Postal Savings funds received by the local Post Office and the manner of redeeming [fol. 10] Postal Savings Certificates is set out in a statement signed by Sara G. Friel, Postmaster at Ashland, Kentucky, a copy of which is attached to and made a part of this Stipulation by reference.

3. There is also attached hereto and made a part of this Stipulation by reference a copy of a Report made to the Federal Reserve Board, under date of October 12, 1940, and as of June 30, 1940, by B. F. Cain, Third Assistant Postmaster General, showing the funds then in the hands of the Postal Savings System and the extent to which same were invested in securities of the United States. It is agreed that the difference between the amount of "Total Assets" and the "Balance to credit of Depositors" shown in said report represents interest realized from investments.

H. Appleton Federa, *Counsel for Ky. Tax Commission;* Robt. T. Caldwell, Caldwell and Gray, *Counsel for Trustee.*

EXHIBIT TO STIPULATION OF FACTS

United States Post Office

Ashland, Kentucky

November 12, 1940

First Class

Mr. Ben Williamson, Jr., Trustee, Kentucky Fuel Gas Corporation, Ashland, Kentucky

DEAR SIR:

Replying to your request for information as to how postal savings certificates are handled.

All our receipts from the sale of postal savings certificates are forwarded each day to the postmaster at Louisville, Kentucky, which is the central accounting [fol. 11] post office for this state. I am not familiar with the way the money is handled when it reaches the Louisville post office. This office has no local bank deposit for postal savings funds.

When certificates are presented for payment, if the amount is small enough to be conveniently handled at this office, they are redeemed out of current cash on hand. If they are of a substantial amount, it is necessary to give notice to the Department at Washington a few days in advance of the date the certificates are to be paid and they forward a check from Washington in payment of the certificates, when delivered to this office properly endorsed.

Yours very truly, (S.) Sara G. Friel, *Postmaster.*

SGF m

EXHIBIT TO STIPULATION OF FACTS

Copy HAL:RBM

Filed Nov. 16, 1940

October 12, 1940

The Federal Reserve Board, Washington, D. C.

Attention V. Hodson

GENTLEMEN:

There are listed below data relative to the amount due postal savings depositors and the distribution of the Assets of the System as of the close of the month of June, 1940:

Balance to credit of depositors	$1,293,292,778.00
Total assets	1,336,612,432.25
Cash in depository banks	43,122,294.52
Total investments	1,224,332,188.70

[fol. 12] U. S. Gov't	$1,077,990,298.27	
Guaranteed	146,341,890.43	
Reserved fund and receivables		69,157,949.03

Very truly yours, —— ——, Third Assistant Postmaster General.

Note. The $146,341,890.43 guaranteed Government securities consist of investments in the Federal Farm Loan Corporation bonds and Home Owners' Loan Corporation bonds in which principal and interest are fully guaranteed.

B. F. C.

IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed December 30, 1940

Comes the trustee for the Kentucky Fuel Gas Corporation by counsel, and the Department of Revenue of the Commonwealth of Kentucky by counsel, and stipulate the following facts:

That on June 29, 1940, the National Banks had total assets of $36,885,080,000, of which $9,373,592,000 were invested in obligations of the United States Government and

agencies and corporation of that Government, as set forth in the following manner:

National Banks—June 29, 1940,

(5,170 banks; total assets, $36,885,080,000)

Direct U. S. Government obligations:

Treasury bills	$581,008,000	
Treasury notes	1,649,690,000	
Bonds	4,989,192,000	
		$7,219,890,000

[fol. 13] Obligations guaranteed by U. S. Government:

Reconstruction Finance Corporation	$366,811,000	
Home Owners' Loan Corporation	1,066,195,000	
Federal Farm Mortgage Corporation	247,715,000	
Other Government Corporations and Agencies	210,615,000	
		$1,891,336,000
Total U. S. Government obligations direct and guaranteed		$9,111,226,000
U. S. Government Corporations' and Agencies' obligations not guaranteed by U. S. Government Federal Land Banks	$77,757,000	
Federal Intermediate Credit Banks	91,468,000	
Other Government Corporations and Agencies	93,141,000	
		$262,366,000
Grand Total U. S. Government Corporations' and Agencies' obligations, direct, guaranteed and not guaranteed by U. S. Government		$9,373,592,000

That the Social Security Board in their Old Age Insurance Trust Fund on August 31, 1940, had total assets of $1,893,078,000, and of this total assets $1,728,100,000 were invested in treasury notes of the United States Government. [fol. 14] That the Unemployment Trust Fund on August 31, 1940, the total assets were $1,817,015,000 of this fund $1,808,000,000 invested in certificates of indebtedness in the United States.

That the Railroad Retirement Account on August 31, 1940, had total assets of $194,188,000 of which $85,400,000 was invested in 3% treasury notes.

That as of December 31, 1938, the total admitted assets of Life Insurance Companies operating in the United States, totalled $29,579,000,000 and that 18% of these total assets consisted of United States Government bond-.

Caldwell and Gray, *Attorney—Ky. Fuel and Gas Corpn.;* H. Appleton Federa, *Attorneys—Department of Revenue.*

IN UNITED STATES DISTRICT COURT

JUDGMENT—Filed April 11, 1941

Came Clyde H. Reeves, Commissioner of Revenue of the Commonwealth of Kentucky, and tendered his petition for leave — intervene in this action for the purpose of having determined the liability of the Trustee of the Kentucky Fuel Gas Corporation for a tax claim alleged due the Commonwealth of Kentucky, and setting up said tax claim therein, and the Trustee, by counsel, being present and agreeing to such intervention, and the Court being advised, it is now ordered that leave is granted to the Commissioner of Revenue for the Commonwealth of Kentucky to intervene herein for said purposes and that said petition be filed and made a part of the record herein.

[fol. 15] Thereupon came the Trustee, by counsel, and tendered a motion to dismiss said intervening petition, and the tax claim therein asserted and the Court being advised, said motion is now ordered to be filed and made a part of the record herein.

Said cause being then, by consent of the parties by counsel, submitted upon the issues raised by said petition and

the motion to dismiss same, and the Court being advised, and having heard the parties thereon, the Court thereupon made and filed findings of fact and rulings of law, which are now noted of record. It is also ordered that the memorandum opinion of the Court upon the issues raised by the Trustee's Petition for Advice upon said tax claim heretofore filed herein be and is adopted by the Court and made a part of the record in this proceeding.

It is therefore now ordered and adjudged,

(1) That the tax claim asserted in said petition on behalf of the Commonwealth of Kentucky against the Trustee, seeking to subject said postal savings certificates held by the Trustee to taxation at the rate of 50c per $100.00, is discriminatory.

(2) That said postal savings certificates, or the deposits represented thereby, may not be constitutionally subjected to taxation by a State.

Wherefore said tax claim is denied, said attempted assessment is declared invalid and said petition dismissed, to all of which rulings of the Court the Intervening Petitioner objects and excepts.

H. Church Ford, *Judge.*

April 11, 1941.

[fol. 16] In United States District Court

Opinion—Filed April 11, 1941

This is a proceeding originally instituted for corporate reorganization under section 77-B of the Bankruptcy Act. The trustee of the debtor, Kentucky Fuel Gas Corporation, deposited funds of the estate in a Postal Savings Depository of the United States, under authority of Sec. 3 of the Act of Congress of 1933 (47 Stat. 1482, 11 USCA § 101a). As evidence of the deposits, he held United States Postal Savings Certificates aggregating $275,000 during the year 1938. The certificates were issued by the Postmaster General under the authority conferred by Sec. 5 of the Postal Savings Depository Act of 1910 (36 Stat. 815, 39 USCA § 755). Sec. 16 of the Act (39 USCA § 766) pledges the faith of the United States to their payment.

The trustee has filed in this proceeding a petition for

advice stating that on October 18, 1939, the Commissioner of Revenue of the Commonwealth of Kentucky filed with him a verified proof of claim asserting liability of the debtor and its trustee to the State of Kentucky for taxes assessed for the year 1938 upon the postal savings deposits evidenced by the certificates so held by the trustee, at the rate of fifty cents per one hundred dollars of value, together with the statutory penalty and interest imposed for delinquency. With his petition, he filed a copy of the proof of claim and states that he has refused to pay it on the ground that postal savings deposits are exempt from state taxation by the Constitution and laws of the United States. He prays for a ruling upon the question and for advice as to his duty in respect to it.

The Attorney General of Kentucky appeared on behalf of the State in support of the claim. The matter is submitted [fol. 17] for adjudication upon the trustee's petition for advice.

That property of a debtor in the hands of an operating trustee in a proceeding of this character is subject to the same tax liability which would be applicable to that of a corporation conducting like business in the state is not disputed. 48 Stat. 993; 28 USCA § 124a; Swarts v. Hammer, 194 U. S. 441; Boteler v. Ingels, 308 U. S. 57; Thompson v. State of Louisiana, 98 F. (2d) 108; Webster and Atlas National Bank of Boston v. Palmer, 111 F. (2d) 215.

The questions giving rise to this controversy are: Does the tax sought to be laid by the State upon the intangible property of the debtor, evidenced by United States Postal Savings Certificates, constitute such a burden upon or interference with the instrumentalities or activities of the Federal Government as to be beyond the power of the State by reason of implied constitutional immunity attaching to functions of the Federal Government, and, if not, are postal savings deposits "obligations of the United States" exempted by Congress from state and other local taxation by the provisions of Section 3701 of the Revised Statutes of the United States, (31 USCA §742).

In considering the first question, it is not material whether the purpose of the Act of 1910 (36 Stat. 814-819, 39 USCA §§751-769), by which Congress established the Postal Savings System within the Post Office Department, was merely to encourage and promote habits of thrift among the people, as contended by the Attorney General or

whether it was also designed as a means to facilitate the fiscal operations of the Government, as insisted by the trustee upon the authority of Farley v. Albers, 112 F. (2d) 101, for it is not claimed or suggested that the creation of the system was not an appropriate exercise of the constitutional powers of the Government. Whatever may [fol. 18] have been its original or underlying purpose, its present use is as an integral part of the governmental structure and, with respect to Constitutional immunity from state or other local taxation, it stands upon a parity with all other instrumentalities of the National Government. McCulloch v. Maryland, 4 Wheat. 316; Van Brocklin v. Tennessee, 117 U. S. 151; Smith v. Kansas City Title Co., 255 U. S. 180; Federal Land Bank v. Crosland, 261 U. S. 374.

In recent years the Supreme Court has frequently had occasion to review and reconsider the historic problem of implied constitutional limitation on the power of both the State and the National Governments to tax the instrumentalities or activities of the other. James V. Dravo Contracting Co., 302 U. S. 134; Helvering v. Moutain Producers Co., 303 U. S. 376; Helvering v. Therrell, 303 U. S. 218; Helvering v. Gerhardt, 304 U. S. 405, and Graves v. N. Y. ex rel. O'Keefe, 306 U. S. 466.

Whatever changes or modifications of views expressed in earlier opinions these later decisions reflect as to certain aspects of inter-governmental tax immunity, they indicate no departure from the traditional doctrine that the functions, activities and instrumentalities of the Federal Government are immune from all State or local taxation which, in its effect, operates to discriminate against the exercise by Congress of its constitutional powers or which adversely affects the use of the means employed to carry those powers into execution.

In Helvering v. Gerhardt, 304 U. S. 405, the Court refers to the fact that the doctrine stems from McCulloch v. Maryland, 4 Wheat. 316, and, in commenting upon the conclusions of Chief Justice Marshall in that case, said:

"It was perhaps enough to have supported the conclusion that the tax was invalid, that it was aimed specifically at [fol. 19] national banks and thus operated to discriminate against the exercise by the Congress of a national power. Such discrimination was later recognized to be in itself a

sufficient ground for holding invalid any form of state taxation adversely affecting the use or enjoyment of federal instrumentalities."

In his concurring opinion in Graves v. N. Y. ex rel. O'Keefe, 306 U. S. 466, 488, Mr. Justice Frankfurter says:

"Since two governments have authority within the same territory, neither through its power to tax can be allowed to cripple the operations of the other. Therefore state and federal governments must avoid exactions which discriminate against each other or obviously interfere with one another's operations. These were the determining considerations that led the great Chief Justice to strike down the Maryland statute as an unambiguous measure of discrimination against the use by the United States of the Bank of the United States as one of its instruments of government."

The Statutes of Kentucky (Section 4019-2 Baldwin's 1939 Supplement to Carroll's Kentucky Statutes) impose an annual ad valorem tax for state purposes upon deposits in any bank, trust company or combined bank and trust company organized under the laws of the state or in any national bank of the state at the rate of ten cents on each one hundred dollars of value, (one-tenth of one per cent). All other tangible and intangible personal property, with a few specified exceptions not here material, is taxed at the rate of fifty cents on each one hundred dollars of value, (one half of one per cent). It is not claimed that postal savings deposits are embraced within the provisions of the [fol. 20] statute fixing the low tax rate on bank deposits. The Attorney General in his brief says:

"Even a cursory examination of this statute will reveal that Postal Savings Deposits cannot be brought within the provisions of these sections. Hence Postal Savings Deposits may not be taxed at this rate. All property except that which is expressly exempted by the Kentucky Constitution or Federal law must be taxed for State purposes; and as these deposits cannot be taxed at the ten cent rate, there remains then only the fifty cent rate. Thus the Commonwealth of Kentucky must tax Postal Savings Deposits at the fifty cents per one hundred dollar rate."

Thus by applying to them the so-called "catch all" provision of the statute, the State asserts the right to tax postal savings deposits at five times the rate imposed upon deposits in banks of the state.

While the direct burden of the tax falls upon the owners of the intangible property rights evidenced by United States Postal Savings Certificates, it can scarcely be doubted that the effect of laying a tax load upon them which is substantially heavier than that imposed upon the holders of the same type of property within the state, represented by deposits in banks, will inevitably tend to curtail the use, cripple the growth and retard the development of the postal deposit facilities and thus injuriously affect the means employed by the Government to accomplish its purposes. See, Farmers & Mechanics Savings Bank v. Minnesota, 232 U. S. 516. No extraordinary gift of prophecy would seem to be required to forecast the ultimate fate of the Government's system of postal savings deposits if such discrimination against it by the states or other local taxing authorities be permissible.

The opinion of the Supreme Court in Madden v. Kentucky, 309 U. S. 83, which the state insists is authority sus- [fol. 21] taining the validity of such a variation in tax rates, even when affecting governmental agencies, deals only with the question under the due process, equal protection and privileges and immunities clauses of the Fourteenth Amendment. It has no application to or bearing upon the problem of inter-governmental taxation or the constitutional safeguards under which governmental functions are made secure from interference.

Immunity of the agencies and activities of the National Government from the effect of discriminatory state taxation is not dependent upon Congressional fiat but rests upon clearly implied constitutional sanction. We need not inquire whether postal savings deposits are embraced within the terms of section 3701 of the Revised Statutes (31 USCA § 742) for neither declaration of exemption by Congress nor the absence thereof would add to or detract from complete immunity existing by virtue of the necessary implications of the Constitution.

In Graves v. N. Y. ex rel. O'Keefe, supra, it is said:

"It is true that the silence of Congress when it has authority to speak, may sometimes give rise to an implication

as to the Congressional purpose. The nature and extent of that implication depend upon the nature of the Congressional power and the effect of its exercise. But there is little scope for the application of that doctrine to the tax immunity of governmental instrumentalities. The constitutional immunity of either government from taxation by the other, where Congress is silent, has its source in an implied restriction upon the power of the taxing government."

Obviously no decision or consideration of the question whether postal savings deposits may be constitutionally subjected to a non-discriminatory state tax is called for, since no such tax is here involved.

[fol. 22] It follows from what has been said that the tax claim herein asserted on behalf of the State against the postal savings deposits held by the trustee is discriminatory on its face and hence should be and is adjudged unconstitutional and void. The action of the trustee in refusing to pay it is approved.

(S.) H. Church Ford, *Judge.*

March 19, 1941.

Hubert Meredith, Attorney General; H. Appleton Federa, Asst. Attorney General, Attorneys for Commissioner of Revenue of Commonwealth of Kentucky. Robert T. Caldwell, Ashland, Ky., Attorney for Trustee.

In United States District Court

Findings of Fact—Filed April 11, 1941

Pursuant to Rule 52 of the Federal Rules of Civil Procedure, the following finding of facts is made:

(1) H. Clyde Reeves is the duly authorized, qualified and acting Commissioner of Revenue of the Commonwealth of Kentucky, and as such has the duty of collecting taxes under Sections 4077-4091, Carroll's Kentucky Statutes, 1936 Edition, and Supplements thereto.

(2) The Kentucky Fuel Gas Corporation is a Delaware Corporation and was qualified to and did business in Ken-

tucky during the calendar year of 1938 under the trusteeship of Ben Williamson, Jr.

(3) Ben Williamson, Jr., was prior to January 1, 1939, and during the calendar year of 1938, appointed qualified and acting trustee of the Kentucky Fuel Gas Corporation [fol. 23] in bankruptcy action 991-B in this Court pursuant to a petition filed therein by creditors and stockholders in accordance with the reorganization provisions of 77-B of the Federal Bankruptcy Statutes and the Chandler Act.

(4) The Kentucky Fuel Gas Corporation under the trusteeship of Ben Williamson, Jr., during the calendar year of 1938, was a corporation coming under the provisions of Section 4077-4091, Carroll's Kentucky Statutes, 1936 Edition and Supplements thereto.

(5) The Kentucky Fuel Gas Corporation under the trusteeship of Ben Williamson, Jr., owned during the calendar year of 1938, $275,000.00 which it invested in Postal Savings Deposits.

(6) This property mentioned above was not part of the operating property of the company in exercising its franchise and hence was "non-operating intangible property."

(7) Under Section 4019 Baldwin's 1938 Kentucky Statute Supplement, all intangible property is assessed for state taxation at 50% per hundred dollars except that deposits in any bank, trust company, or combined bank and trust company, located in this State are taxed at 10c per hundred dollars and building and loan associations incorporated under the laws of this State, and making loans to members only are taxed at $1.00 per thousand dollars of their capital stock.

(8) The property mentioned in (5) was assessed by the Kentucky Tax Commission of the Department of Revenue of the Commonwealth of Kentucky and a tax thereon fixed by imposition of 50c per $100.00 at $1,570.00 and said assessment, if valid, became final June 1, 1939, when notice was received by the Kentucky Fuel Gas Corporation operating under the trusteeship of Ben Williamson, Jr.

(9) The trustee refused to pay the assessment, and on July 1, 1939, the assessment and tax, if valid, became delin-

[fol. 24] quent in accordance with Section 4091, Carroll's Kentucky Statutes, 1936 Edition.

(10) The Postal Savings System, as at present administered, is an integral part of the Government's fiscal agencies and is used as a substantial means of governmental financing operations. At the close of the fiscal year ending June 30, 1940, the total assets of the System, and the extent to which they had been used for governmental financing, as shown by the Postmaster General's report to the Federal Reserve Board, were as follows:

Balance to credit of depositors		$1,293,292,778.00
Total assets		1,336,612,432.25
Cash in depository banks		43,122,294.52
Total investments		1,224,332,188.70
U. S. Gov't	$1,077,990,298.27	
Guaranteed	146,341,890.43	
Reserve fund and receivables		69,157,949.03

The item of "Guaranteed" investments, of $146,341,-890.43, consisted of investments in the Federal Farm Loan Corporation's bonds, and Home Owners Loan Corporation bonds in which principal and interest are guaranteed.

(11) The imposition of a State tax of 50¢ per $100.00 of the principal amount of Postal Savings Certificates, which bear interest at the rate of 2% per annum, will adversely interfere with and retard the development and use of the Postal Savings deposit facilities, will injuriously affect the means employed by the Government to accomplish its purpose and will constitute a substantial burden upon the use of the System as a governmental financing agency.

Conclusions of Law

1. Postal Savings Certificates are "obligations of the [fol. 25] United States" exempted by Congress from State and other local taxation by the provisions of Section 3701 of the Revised Statutes of the United States, (31 USCA, Sec. 742).

2. The Postal Savings system is, as now constituted, a governmental financing agency and, as such, the postal savings certificates issued by it are exempt from taxation under the Constitution of the United States.

3. Taxation by the State of Postal Savings certificates, or the savings deposits represented thereby, at the rate of 50c per $100.00 of principal amount would constitute an unconstitutional discrimination against this governmental agency, and would unconstitutionally burden its operations.

(S.) H. Church Ford, *Judge.*

In United States District Court

Notice of Appeal—Filed April 25, 1941

Notice is hereby given that H. Clyde Reeves, Commissioner of Revenue of the Commonwealth of Kentucky, intervening petitioner in the above styled action hereby appeals to the Circuit Court of Appeals for the Sixth District from the final order entered on the 11th day of April, 1941, in this action.

Hubert Meredith, *Attorney General;* H. Appleton Federa, *Assistant Attorney General,* Attorneys for Intervening Petitioner.

[fol. 26] Cost Bond on Appeal for $250.00 filed April 25, 1941, omitted in printing.

[fol. 27] In United States District Court

Designation of Record—Filed April 25, 1941

To the Clerk of the United States District Court, Eastern District of Kentucky, at Lexington, Kentucky.

Please prepare and complete transcript of the record in this case to be filed in the office of the Circuit Court of Appeals of the United States for the Sixth Circuit under the appeal, taken, allowed and perfected to said Court including in your transcript the following pleadings and papers on file to wit:

(1) Intervening Petition of H. Clyde Reeves.

(2) Motion to Dismiss Intervening Petition.

(3) Stipulation of fact submitted by Kentucky Fuel Gas Corporation, plus exhibits thereto.

(4) Stipulation of facts submitted by H. Clyde Reeves Commissioner of Revenue of the Commonwealth of Kentucky.

(5) Findings of fact and conclusions of law.

(6) Order filed April 11, 1941.

(7) Memorandum opinion of the Court upon the issues raised by the Trustee's petition for advice.

(8) Notice of Appeal.

(9) Bond on Appeal.

(10) This Praecipe.

(11) Clerk's Certificate.

Said transcript to be prepared as required by law and rules for the Circuit Court of Appeals for the Sixth Circuit and file in the office of the Clerk of said Court at Cincin-
[fol. 28] nati, Ohio, not less than thirty days from the filing of the final order herein.

This 19th day of April, 1941.

Hubert Meredith, *Attorney General;* H. Appleton Federa, *Assistant Attorney General.*

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 29] In United States Circuit Court of Appeals for the Sixth Circuit

Cause Argued and Submitted—March 10, 1942

Before Simons, Allen and Martin, JJ.

This cause is argued by H. Appleton Federa for Appellant and by Robert T. Caldwell for Appellee and is submitted to the court.

In United States Circuit Court of Appeals

Decree—April 17, 1942

Appeal from the District Court of the United States for the Eastern District of Kentucky.

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the [fol. 30] Eastern District of Kentucky, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the order of the said District Court in this cause be and the same is hereby affirmed.

[fol. 31] UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

In the Matter of KENTUCKY FUEL GAS CORPORATION, Debtor
No. 991-B

H. CLYDE REEVES, Commissioner of Revenue of the Commonwealth of Kentucky, Intervening Petitioner, *Appellant*,

v.

BEN WILLIAMSON, JR., Trustee of the Kentucky Fuel Gas Corporation, *Appellee*

Appeal from the United States District Court, Eastern District of Kentucky

OPINION—Filed April 17, 1942

Before Simons, Allen and Martin, Circuit Judges

ALLEN, Circuit Judge:

This appeal arises out of the refusal of the appellee, trustee in bankruptcy of a corporation in reorganization, to pay a state tax upon funds of the debtor deposited pursuant to Title 11, U. S. C., Section 101a, in a postal savings depository of the United States situated in Kentucky, for which the appellee during 1938 held certificates of deposit in the amount of $275,000. The appellant is the Commissioner of Revenue for Kentucky, who was permitted to intervene in the bankruptcy proceedings for the purpose of asserting a claim for such taxes together with accrued interest and penalty thereon. Sections 4077 and 4019, Baldwin's Supplement to Carroll's Kentucky Statutes, prescribed a tax upon deposits in state banks and national banks of the state

at ten cents per one hundred dollars valuation, upon real [fol. 32] estate at five cents per one hundred dollars valuation, and upon all other property directed to be assessed at fifty cents for each one hundred dollars valuation. The postal savings deposits and the certificates representing them held by the appellee were considered to be within the latter classification and were assessed at the fifty cent rate.

The question is whether or not imposition of the tax constitutes a legitimate exercise of the state taxing power. The District Court held the assessment invalid and dismissed the petition, upon the ground that taxation of postal savings deposits constitutes a direct interference by the state with the exercise of federal power and upon the further ground that taxation at the rate imposed places a discriminatory burden on an activity of the federal government.

Postal savings depositories are established by the federal government in accordance with Title 39, U. S. C., Section 751 et seq. When a postal savings account is opened the depositor receives a pass-book, or, as in this case, a certificate of deposit, entitling him to withdraw the whole or any part of the fund deposited upon demand (Section 758). The funds received are required to be deposited in solvent banks in the city, town, village or locality in which the deposit is made, or if there is no qualified bank in that locality, in the bank most convenient thereto (Section 759). Withdrawals are required to be paid from the deposits in the state and in the community in which the deposit is made, so far as is practicable (Section 758). The faith of the United States is pledged to the payment of the deposits (Section 766), and this pledge is carried upon the face of the certificate of deposit involved herein. Under Section 759, "When, in the judgment of the President, the general welfare and interests of the United States so require, the board of trustees may invest all or any part of the postal savings funds, except the reserve fund of 5 per centum herein provided for, in bonds or other securities of the United States." The record shows that as of the close of the month of June, 1940, there was a balance due postal savings depositors in the United States of approximately $1,293,000,000, and that over 91 per cent of the postal savings funds has been invested in securities of the United States.

The creation and operation of the postal savings system are within the constitutional powers of the national gov-

ernment. Therefore, the activities carried on through the postal savings system are governmental functions which stand on a parity with all other activities carried on by that [fol. 33] government in respect to their constitutional immunity from state taxation. *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32; *Federal Land Bank of St. Paul* v. *Bismarck Lumber Co.*, 314 U. S. 95, 102.

The nature and practical importance of the functions of the system have been aptly summarized by the Court of Appeals of the District of Columbia in *Farley* v. *Albers*, 112 Fed. (2d) 401, certiorari denied, 311 U. S. 653:

"Taken as a whole, the system constitutes a part of both the postal and fiscal operations of the government. Profits are treated as postal revenue, and the fund is held in reserve for emergency use of the government and to facilitate government refinancing operations by the purchase of government bonds. It is safeguarded as other public moneys, and the obligation to the depositors is the pledge of the United States." (P. 402.)

Obviously postal savings deposits are not deposits either in a state bank or in a national bank situated in the state, and therefore they do not come within the ten cent tax upon such deposits imposed by the Kentucky statute. From every standpoint, however, so far as the depositor is concerned, the postal savings deposit is the equivalent of a local bank deposit. The depositor receives either a passbook or a postal savings certificate, his money is withdrawable on demand, and an obligation of the United States is created which is at least analogous to the relationship between a bank and its depositors. The state banks and national banks within the state compete with postal savings depositories for the money of the local depositors. The local feature of the transaction is emphasized by the statutory provisions cited, which require that money received for deposit, as here, at a local depository, shall be deposited in banks within the state and so far as possible within the community. If withdrawal of the deposit is sought, payment is to be made so far as possible from deposits within the state. The ten cent tax provision which applies to deposits in banks, however, does not cover postal savings, and the only provision of the Kentucky

statutes applicable to postal savings deposits is that which requires their assessment at fifty cents for each one hundred dollars (Section 4019). From a practical aspect, a tax upon these deposits which is five times the tax imposed upon deposits in all banks in Kentucky is plainly discrimi-[fol. 34] natory unless the holding in *Madden, Extr.* v. *Kentucky by Reeves, Commr.*, 309 U. S. 83, as contended by appellant, requires a different conclusion. That case held that a statute by which the state of Kentucky taxed deposits in banks outside the state at fifty cents per each one hundred dollars, is consistent with the due process, equal protection, and privileges and immunities clauses of the Fourteenth Amendment. The statutes there construed are the same as those involved here. The question of the application of the statute to postal savings deposits was not presented.

In the *Madden* case, the court, calling attention to the broad discretion as to classification possessed by a state legislature in the field of taxation, emphasized the difficulty in collecting the tax on deposits outside the state as compared with the tax on local deposits, and held the classification not invalid under the Fourteenth Amendment. The court declared that the classification may have been founded in the comparative difficulty and expense of tax collections upon bank deposits within and outside the state respectively. In a note (page 89) the court reviews the history of the legislation. It describes the high rate of taxation on intangibles in Kentucky prior to the constitutional amendment of 1916 which permitted classification, and states that this high rate of taxation led to widespread evasion of the tax in case of bank deposits by withdrawals for deposit outside the state. The purpose of the enactment of §§ 4077 and 4019, we therefore conclude, was to reach out-of-state deposits.

Here the deposits were made within Kentucky through the postal depository office at Ashland, Kentucky. Appellant claims, however, that the provision of Title 39, U. S. C., Section 762, that "No person connected with the Post Office Department shall disclose to any person other than the depositor the amount of any deposits unless directed so to do by the Postmaster General," places the instant case squarely within the rule of the *Madden* case, *supra*. However, the written personal property return required of resident taxpayers such as the insolvent debtor enables

the Kentucky tax authorities to ask the direct question as to the existence of postal savings deposits and certificates representing them, and makes it difficult for the taxpayer to conceal such deposits made within the state or the certificates therefor.

A study of the Kentucky statutes, Sections 4077 and 4019, *supra*, leads to the reasonable inference that the legislature of Kentucky, when it subjected deposits in "national banks within the state" as well as state banks to the ten cent tax provision, considered that it was cover-[fol. 35] ing the whole field of local bank deposits. It did not in Section 4019 specifically tax postal savings at the fifty cent rate, but applied the tax to "all other property" directed to be assessed for taxation as provided by law. We think this catchall provision, in view of the history detailed in the *Madden* case, *supra*, p. 89, was designed to reach bank deposits outside the state, and that the postal savings deposits within the state are included not through deliberate legislative intent, but simply because they fall within the terms of the provision. The holdings in *Commonwealth* v. *Madden's Extr.*, 265 Ky. 684, and *Madden's Extr.* v. *Commonwealth*, 277 Ky. 343, and in the United States Supreme Court case (309 U. S. 83) were directed to the taxation of bank deposits without the state and to no form of deposit within the state. We conclude that the *Madden* case does not decide that the fifty cent tax is nondiscriminatory and valid as between postal savings deposits made within Kentucky and all other deposits within the state taxed at the ten cent rate.

We think this conclusion is emphasized by the fact that neither the Kentucky holdings nor the Supreme Court decision considered the question of the effect of this state tax upon an instrumentality of the federal government which in addition to offering a safe depository for individual funds has also become an important federal financing agency. The imposition of such a prohibitive interference upon the activities of a federal institution was totally absent from the situation presented in those cases.

This discriminatory tax sought to be laid by the state upon United States postal savings deposits constitutes such a substantial burden upon an instrumentality and activity of the federal government as to be beyond the power of the state to impose. Postal savings institutions are a part of the structure of the federal government and

entitled under the constitution to the same immunity from interference by the state as other federal instrumentalities. *Graves* v. *New York ex rel. O'Keefe, supra; Pittman* v. *Home Owners' Loan Corp., supra; Federal Land Bank of St. Paul* v. *Bismarck Lumber Co., supra.* While in recent adjudications by the Supreme Court earlier doctrines of immunity of instrumentalities of the state and federal governments to taxation have been revised (Cf. *Helvering* v. *Gerhardt,* 304 U. S. 405), nevertheless the doctrine that in our dual system of government neither authority has power through taxation to cripple or destroy the operations of the other has not been modified.

[fol. 36] Recent Supreme Court cases repeatedly emphasize that the extension of the federal power to tax the income of state officials and vice versa, of state power to tax the income of federal officers, as well as the power to compel payment of taxes by persons who deal with governmental agencies, exists only in case the tax is non-discriminatory. *James* v. *Dravo Contracting Co.,* 302 U. S. 134, 161; *Helvering* v. *Mountain Producers Corp.,* 303 U. S. 376, 385; *Helvering* v. *Gerhardt, supra,* 420; *Graves* v. *New York ex rel. O'Keefe, supra,* 484, 485, 487. There has been no change in the rule that an implied immunity arises from undue interference when one governmental authority imposes its tax burdens on another. *Graves* v. *New York ex rel. O'Keefe, supra,* 481, 484. Obviously taxing postal savings certificates, and the deposits which they represent, five times as much as deposits in banks within the state, will cripple the extension, and within Kentucky possibly destroy the use of postal savings. If these deposits are to be taxed at such a rate in comparison with ordinary bank deposits throughout the forty-eight states, the use of postal savings depositories may be practically terminated. It follows that this tax cannot be upheld.

These conclusions make it unnecessary to decide whether these funds would be exempt from non-discriminatory taxation within the state if non-discriminatory tax provisions were enacted by the Kentucky legislature. We also deem it unnecessary to enter into a discussion of the codification of the various statutes and the extensive legislative history urged upon us by the appellant in connection with the question of the claimed immunity of these deposits from taxation under Title 31, U. S. C., Section 742, Section 3701 R. S. Since the tax is plainly discriminatory and

substantially burdens an instrumentality of the federal government, the order of the District Court, dismissing appellant's petition is correct and is affirmed.

CONCURRING OPINION

SIMONS, Circuit Judge (concurring). I concur in the result reached by the majority, but not on the ground that the Kentucky statute discriminates against postal savings deposits. I perceive no discrimination between such deposits and others of the same classification, and the classification has been held reasonable in the *Madden* case. The exaction is, however, an unconstitutional burden upon the financial activities of the Federal government, within the holding of the cases cited in the opinion.

[fol. 37] Petition for rehearing covering 6 pages, filed May 14, 1942, omitted from this print. It was denied, and nothing more by order of June 1, 1942.

[fol. 38] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—June 1, 1942

The petition for rehearing is denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

PETITION FOR APPEAL—Filed July 7, 1942

Now comes the appellant and intervening petitioner, H. Clyde Reeves, individually and as Commissioner of Revenue of the Commonwealth of Kentucky, and feeling himself aggrieved by the final decree of the court entered herein the 17th day of April 1942, prays an appeal therefrom to the Supreme Court of the United States. The particulars wherein he considers the final decree erroneous are set forth in his assignment of errors on file and to which reference is made.

[fol. 39] Wherefor- the premises considered, your petitioner prays that an appeal in his behalf to the Supreme

Court of the United States for the correction of the errors complained of and herewith duly assigned, be allowed and granted; and that an order be had fixing the amount of bond and security to be given by this appellant and conditioned as the law directs, and he prays a reversal of said decree.

Hubert Meredith, Attorney General; M. B. Holifield and Jesse K. Lewis, Asst. Atty. General, Attorneys for Appellant.

In United States Circuit Court of Appeals

Assignments of Error—Filed July 7, 1942

Now comes the appellant, H. Clyde Reeves, individually and as Commissioner of Revenue of the Commonwealth of Kentucky and in connection with his Petition for Appeal, files the following assignments of error on which he will rely in his Appeal to Supreme Court of the United States from the final decision of the United States Circuit Court of Appeals, Sixth Circuit, entered on the 17th day of April, [fol. 40] 1942.

The Circuit Court of Appeals erred:

1. In affirming the judgment and order of the District Court, dismissing the intervening petition of appellant.

2. In not upholding and sustaining the validity of Section 4019, Baldwin's 1938 Supplement to Carroll's Kentucky Statutes as applied to Postal Savings Certificates held by appellee.

3. In holding and adjudging that said section 4019 Carroll's Kentucky Statutes, Baldwin's 1938 Supplement was invalid for reason that it violated the Constitution of the United States in that the holder and owner of Postal Savings Certificates, such as appellee, would be discriminated against by being required to pay the 50-cent rate of taxation whereas the holder and owner of certain other classes of deposit certificates would be required to only pay the 10-cent rate.

4. In the rendition of the final order and decree in this cause filed and entered the 17th day of April, 1942.

For which errors the appellant, H. Clyde Reeves, Commissioner of Revenue of the Commonwealth of Kentucky, prays that the said judgment of the Circuit Court of Appeals, Sixth Circuit, in the above-entitled cause, be reversed and a judgment entered in favor of the said appellant and [fol. 41] for costs.

Hubert Meredith, Attorney General; M. B. Holifield, Jesse K. Lewis, Attorneys for Appellant.

[fol. 42] In United States Circuit Court of Appeals

Order Allowing Appeal—Filed July 7, 1942

The petition of H. Clyde Reeves, Commissioner of Revenue of the Commonwealth of Kentucky, intervening petitioner in the above entitled cause, for an appeal in the above entitled cause to the Supreme Court of the United States from a judgment of the Circuit Court of Appeals, Sixth Circuit, having been filed herein accompanied by an assignment of errors and statement as to jurisdiction, all as provided by Rules 9 and 12 of the rules of the United States Supreme Court and the said papers having been presented to this court and the record in this cause having been considered;

It is hereby ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from a final decree of the United States Circuit Court of Appeals, Sixth Circuit, entered in this cause on the 17th day of April, 1942, and that the Clerk of the said Circuit Court of the [fols. 43-44] United States for the Sixth Circuit which, within 40 days from this day, make and transmit to the Supreme Court of the United States, under his hand and seal of the Court, a true copy of the material parts of the record herein, which shall be designated by praecipe or a stipulation of the parties or their counsel herein, or in accordance with Rule 10 of the rules of the Supreme Court of the United States.

It is further ordered that the said appellant shall give a good and sufficient cost bond in the sum of $500.00, conditioned as required by law.

Done by the Court this Third day of July, 1942.

Elwood Hamilton, Circuit Judge.

Citation in usual form showing service on R. T. Caldwell, filed July 7, 1942, omitted in printing.

[fol. 45] In United States Circuit Court of Appeals

Stipulation Waiving Bond—Filed July 7, 1942

It is hereby stipulated by and between the attorneys for the respective parties that the bond on appeal be waived.

Hubert Meredith, Atty. General; M. B. Holifield, Jesse K. Lewis, Asst. Atty. General, Attorneys for Appellant; Robt. T. Caldwell, Porter M. Gray, Attorneys for Appellee.

[fol. 46] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 47] In Supreme Court of the United States

Statement of Points To Be Relied Upon and Designation of Parts of Record To Be Printed—Filed July 27, 1942

Now comes the appellant in the above entitled cause and states that the points upon which he intends to rely in this court in this case are as follows:

Point 1. That the United States Circuit Court of Appeals, Sixth Circuit, erred in refusing to reverse the order and judgment of the United States District Court, Eastern District of Kentucky.

Point 2. That the United States Circuit Court of Appeals, Sixth Circuit, erred in not upholding and sustaining the validity of Section 4019, Baldwin's 1938 Supplement to Carroll's Kentucky Statutes as same applies to taxation of $275,000 of Postal Savings Certificates held and owned by appellee.

Point 3. That the United States Circuit Court of Appeals, Sixth Circuit, erred in holding and adjudging that said Section 4019, Baldwin's 1939 Supplement, Carroll's [fol. 48] Kentucky Statutes, was invalid for reason that it violated the 14th Amendment to the Constitution of the

United States in that appellee as the holder and owner of $275,000.00 of Postal Savings Certificates, in being required to pay the 50¢ rate of tax thereon, would be discriminated against, because the holder and owner of certain other classes of deposit certificates would be required under said statute to only pay the 10¢ rate of tax.

Point 4. That the United States Circuit Court of Appeals, Sixth Circuit, erred in not holding that the Postal Savings Certificates held and owned by appellee were taxable, and erred in not holding that said Section 4019 of said Kentucky Statutes was valid under the Constitution of Kentucky and the Constitution of the United States as applied to Postal Savings Certificates owned by a Kentucky tax payer such as appellee.

Respectfully submitted, Hubert Meredith, Attorney General; M. B. Holifield, Assistant Attorney General; Jesse K. Lewis, Assistant Attorney General.

On this 21st day of July, 1942, personally appeared Jesse K. Lewis before me, subscriber, Ruth Nicholson, and makes oath that he delivered a true copy of the Statement of Points to be Relied Upon to Robert Caldwell, Attorney for appellee, by mailing same to said attorney at Ashland, Kentucky, on the 21st day of July, 1942.

Jesse K. Lewis.

Sworn and subscribed to 21st day of July, 1942. Ruth Nicholson, Notary Public. My commission expires the 22 day of Nov., 1943. (Seal.)

[fol. 49] APPELLANT'S DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Now comes the above named appellant and represents that the whole of the record, as filed, is necessary for the consideration of the case upon this appeal.

Hubert Meredith, Attorney General; M. B. Holifield, Jesse K. Lewis, Asst. Attorney General, Counsel for Appellant.

Service of the foregoing "Designation" is hereby acknowledged this 6 day of July, 1942.

Caldwell & Gray, Counsel for Appellee.

[fol. 50] [File endorsement omitted.]

[fol. 51] Endorsed on Cover: File No. 46,753. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 259. H. Clyde Reeves, Commissioner of Revenue of the Commonwealth of Kentucky, Appellant, vs. Ben Williamson, Jr., Trustee of the Kentucky Fuel Gas Corporation. Filed July 27, 1942. Term No. 259 O. T. 1942.

[fol. 33] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 259

H. CLYDE REEVES, COMMISSIONER OF REVENUE OF THE COMMONWEALTH OF KENTUCKY, Petitioner,

vs.

BEN WILLIAMSON, JR., TRUSTEE OF THE KENTUCKY FUEL GAS CORPORATION

Order Extending Time Within Which to File Petition for Certiorari

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing petition for certiorari in the above entitled cause be, and the same is hereby, extended to and including October 1st, 1942.

Harlan T. Stone, Chief Justice of the United States.

Dated this 27th day of August, 1942.